

Before the  
COPYRIGHT ROYALTY JUDGES  
Washington, D.C.

In the Matter of	)	
	)	
Distribution of	)	CONSOLIDATED DOCKET NO.
<u>Cable Royalty Funds</u>	)	14-CRB-0010-CD/SD
	)	(2010-2013)
In the Matter of	)	
	)	
Distribution of	)	
<u>Satellite Royalty Funds</u>	)	

**TESTIMONY OF RAUL GALAZ**  
**December 22, 2017**

I am a currently a consultant to Multigroup Claimants, a sole proprietorship organized in the state of Texas. I obtained a Bachelor of Science degree in 1985 from the University of California, Los Angeles. I obtained my Juris Doctor degree in 1988 from Stanford Law School, Stanford University. I have been actively involved in proceedings for the distribution of cable and satellite retransmission royalties for more than two decades, either as a principal, representative, or consultant to Worldwide Subsidy Group, LLC dba Independent Producers Group (“WSG”) and Multigroup Claimants. Multigroup Claimants represents the interests of Worldwide Subsidy Group, LLC in these proceedings.

I have appeared and testified on ~~countless~~many occasions before the Copyright Royalty Board, likely more than any other witness. I have appeared as a witness on behalf of Worldwide Subsidy Group, LLC in proceedings relating to 1997 cable, 1998-1999 cable, 2000-2003 cable, consolidated 2004-2009 cable and 1999-2009 satellite proceedings, and the 2010-2013 cable/satellite proceedings. I have testified orally and through written testimony about a wealth of matters, including as a percipient witness to scores of contracts between WSG and represented claimants, data and evidence supporting particular variations of cable and satellite methodologies, and as a witness critiquing multiple other methodologies. I have been accepted as an expert witness in the Copyright Royalty Board proceedings relating to the Copyright Royalty Board procedures. I have lectured before retransmission royalty industry groups at international conferences. The following facts are within my personal knowledge, and if called upon I could and would testify competently thereto.

Multigroup Claimants filed 2010-2013 cable and satellite claims seeking royalties attributable to several program categories. Multigroup Claimants negotiated settlements with certain claimant groups, e.g., Public Television, Canadian Claimants Group, in each case agreeing on a mutually agreeable distribution methodology. Notwithstanding, Multigroup Claimants continues to

prosecute claims in the sports, devotional, and program supplier categories.

Following the Judges' ruling of October 23, 2017, Multigroup Claimants' 2010-2013 cable and satellite claims were limited to collection from the devotional and program suppliers categories.

As regards the distribution of 2010-2013 cable and satellite royalties, Multigroup Claimants submits no sponsored distribution methodology. Rather, Multigroup Claimants has elected to accept the results of methodologies submitted by adverse parties in these proceedings, subject only to modification as to their accuracy and reasonableness, and according to evidence obtained during the course of these proceedings. To the extent that any proposed methodologies are lacking in accuracy or reasonableness, such issues will be addressed during the rebuttal phase of these distribution proceedings. That is, Multigroup Claimants' concession to any distribution methodology proposed by an adverse party is not unqualified. Rather, it remains subject to any adjustments warranted by information discovered during the course of these proceedings.<sup>1</sup> Moreover,

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<sup>1</sup> A comparable situation before the Judges stands as precedent. In the 2000-2003 cable proceedings (Phase II) the SDC failed to submit any proposed distribution methodology until the rebuttal phase of proceedings, thereby prohibiting from a practical standpoint any discovery on the proposed distribution methodology, any opportunity for WSG to present rebuttal evidence, and any fair opportunity for comment. Despite the Judges' order that the SDC was prohibited from asserting its own distribution methodology, it did not prohibit the SDC from

following the presentation of evidence in the distribution proceeding, the Judges may elect to apply a distribution methodology that was originally submitted in one category in order to dictate the results in another category.<sup>2</sup>

As described in prior pleadings, Multigroup Claimants previously determined that, provided there are a sufficient number of measurements to be considered in a study, the results between methodologies proposed by Worldwide Subsidy Group, LLC and its adversaries did not generate a substantially different

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challenging WSG's distribution methodology. More to the point, the Judges did not invalidate the claims of the SDC due to its failure to submit its own distribution methodology. 78 Fed. Reg. 64984, at 65005 (Oct. 30, 2013).

2 See Docket nos. 2012-6 CRB CD 2004-2009 (Phase II), 2012-7 CRB SD 1999-2009 (Phase II), *Amended Joint Order on Discovery Motions* (July 30, 2014), at p. 8:

“The issue is not whether the Judges are “required” to apply a particular valuation methodology or whether a party can “insist” upon the application of a certain methodology. Rather, the statute directs the Judges to determine the distribution of royalties. See 17 U.S.C. §§ 111(d)(4), 119(b)(5). The Judges do so pursuant to a standard of “relative marketplace value.” [citations omitted]. The Judges may utilize any party’s methodology that they conclude best satisfies this standard, or any methodology that applies elements of the parties’ various proposals and other factors that the Judges, in their discretion, may properly apply. Thus, it would be unlikely that the Judges would conclude, on the one hand, that a particular methodology presented in a particular category in a Phase II proceeding best satisfies the standard, but, on the other hand, refuse to apply that optimal methodology in a different Phase II category.”

result.<sup>3</sup> Further, as a result of the methodologies already presented in the allocation phase of this proceeding and the data described in the direct statements that were submitted, Multigroup Claimants has already anticipated that methodologies substantially similar to methodologies presented in prior distribution proceedings would be presented in this distribution phase. As such, Multigroup Claimants' choice was to either resubmit methodologies that this panel has consistently rejected, or redundantly submit the same information and methodology that this panel has accepted and was already being presented as part of an adversary's methodology in this distribution phase. Both alternatives would present an extraordinary expense for no perceived benefit. Neither alternative made sense from the standpoint of these proceedings, and Multigroup Claimants' decision will substantially narrow the issues for this proceeding.

Anticipating challenge by adverse parties comparable to what appears in the jointly filed *Motion to Strike Multigroup Claimants' Written Direct Statements and to Dismiss Multigroup Claimants from the Distribution Phase* (July 27, 2017),

Multigroup Claimants directs the Judges to the Copyright Act and the CRB

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3 See Multigroup Claimants' *Opposition to Motion to Strike Multigroup Claimants' Written Direct Statements and to Dismiss Multigroup Claimants from the Distribution Phase* (July 27, 2017). Primary differences arose from the adversary parties' unwarranted disparate treatment of programs controlled by Multigroup Claimants' predecessor, such as differences that were not openly revealed (e.g., commands hidden in computer code).

regulations appearing at 37 C.F.R. § 301.1 *et seq.* Although each participant in distribution proceedings is required to file a written direct statement containing sponsoring witness testimony and a percentage or dollar claim, nowhere therein is it required that a party advocate a unique distribution methodology, *or any methodology at all.*

In fact, by all appearances, the requirement that a written direct statement include sponsoring witness testimony was for the purpose of having an individual capable of being examined regarding the claims represented by the party, or an individual capable of being examined *if* a particular distribution methodology was being advocated. By virtue of the fact that the Judges have inverted in this proceeding the order by which direct statements were filed and claims challenges were considered, and the fact that the Judges have already received evidence and ruled on claims challenges,<sup>4</sup> it is questionable whether any sponsoring witness testimony is necessary in the absence of any advocated methodology.

Nonetheless, in the event that the Judges find a need for Multigroup Claimants to have an individual capable of articulating its position vis-à-vis live testimony, I will be the designated representative of Multigroup Claimants.

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<sup>4</sup> The Judges' order of October 23, 2017, read in conjunction with Multigroup Claimants' previously filed Petition to Participate, comprehensively define all claims represented by Multigroup Claimants, on a year-by-year basis.

Pending review of the distribution methodologies advocated by other parties to this distribution proceedings, Multigroup Claimants makes claim to one-hundred percent (100%) of the royalties attributable to the devotional and program supplier categories, comparable to the claims for one-hundred percent of such royalties previously claimed by the Settling Devotional Claimants and the Motion Picture Association of America. Upon review and examination of any distribution methodologies submitted to the Judges, Multigroup Claimants reserves its right to revise its percentage claim according to 37 C.F.R. § 351.4(b)(3).

I declare under penalty of perjury that the foregoing testimony is true and correct and of my personal knowledge.

Executed: December 29, 2017



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Raul C. Galaz

# Certificate of Service

I hereby certify that on Friday, December 29, 2017 I provided a true and correct copy of the TESTIMONY OF RAUL GALAZ to the following:

SESAC, Inc., represented by Christos P Badavas served via Electronic Service at cbadavas@sesac.com

Devotional Claimants, represented by Benjamin S Sternberg served via Electronic Service at ben@lutzker.com

Canadian Claimants Group, represented by Victor J Cosentino served via Electronic Service at victor.cosentino@larsongaston.com

Public Broadcasting Service (PBS), represented by Dustin Cho served via Electronic Service at dcho@cov.com

American Society of Composers, Authors and Publishers (ASCAP), represented by Sam Mosenkis served via Electronic Service at smosenkis@ascap.com

MPAA-represented Program Suppliers, represented by Lucy H Plovnick served via Electronic Service at lhp@msk.com

National Association of Broadcasters (NAB), represented by Ann Mace served via Electronic Service at amace@crowell.com

Spanish Language Producers, represented by Brian D Boydston served via Electronic Service at brianb@ix.netcom.com

Joint Sports Claimants, represented by Michael E Kientzle served via Electronic Service at michael.kientzle@apks.com

Broadcast Music, Inc. (BMI), represented by Janet Fries served via U.S. Mail

National Public Radio, Inc. (NPR), represented by Gregory A Lewis served via Electronic Service at glewis@npr.org

Signed: /s/ Brian D Boydston